



COMMONWEALTH of VIRGINIA

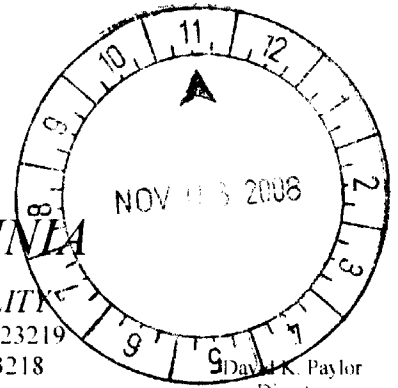
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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON OCTOBER 16-17, 2008

MINUTE NO. 4 – Amendments to the Water Quality Standards (9 VAC 25-260) for Triennial Review

Alan Pollock of the Office of Water Quality Programs summarized the amendments, reviewed the key public comments and agency response to those comments, and responded to questions about the proposal from the Board. All of the public comments were presented in the Board memo. The rulemaking contains many amendments and the more significant ones were presented to the Board. These included a narrative criterion for swamp waters (Class VII waters), revised and new numerical criteria to protect human health and aquatic life, a recommendation to retain the existing freshwater bacteria criteria but establish the geometric mean as the environmentally relevant endpoint for bacteria, and several new special standards. Much of the discussion focused on a proposed special standard for bacteria in the James River from the fall line in Richmond downriver to its confluence with the Appomattox River (proposed special standard “ii”). The City of Richmond requested the special standard to ensure water quality standards were achieved after the Long Term Control Plan to address their Combined Sewer System was completed.

Oral comment was presented to the Board by the following individuals:

Christopher Beschler, Acting Chief Administrative Officer and Public Utilities Director for the City of Richmond, stated the City’s support for special standard ii. He explained to the Board the considerable financial investment the City has made, and will continue to make, to achieve the goal of bringing the Combined Sewer Outfalls (CSOs) into regulatory compliance and that the special standard provides a regulatory endpoint that can be achieved.

Jeff Scarano spoke on behalf of the City of Lynchburg to ask the Board to consider either statewide bacteria criteria based on the higher risk level or a site specific bacteria criterion for the James River through Lynchburg that would provide a regulatory endpoint that can be achieved after their CSO plan is completed.

Joe Tannery spoke on behalf of the Chesapeake Bay Foundation (CBF) in opposition to special standard ii and stated that the City’s finances are a concern but environmental and recreational uses are of greater concern. CBF questions the City’s bacteria modeling results and has

concluded there is not enough information before the public to make the decision to approve the special standard.

Dick Sedgley spoke on behalf of the Virginia Association of Municipal Wastewater Agencies (VAMWA) in support of the higher statewide bacteria criterion and stated that the financial expenditure does not justify the 0.2% increase in public health protection and that the criterion, though somewhat higher than the current, is considered by EPA to be protective of primary contact recreation.

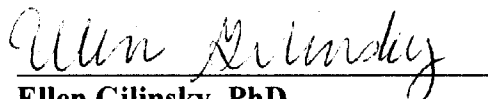
David Sligh spoke as a representative of the Alliance for the Chesapeake Bay and the Southern Environmental Law Center stating their support of the existing statewide bacteria criteria and their opposition to a higher special standard for the James River in Richmond and Lynchburg. He stated that the financial issues regarding compliance goals should not be ignored but the public health is the most important issue.

During the Board discussion several members expressed concern over establishing higher bacteria criteria for the James River below Richmond and a willingness to support the City if, and when, questions arise whether the CSO control program suffices as the City's contribution toward attaining water quality standards.

Decision:

Based upon the information provided to the Board and the staff recommendation, the Board by a unanimous vote approved the following actions:

1. Adopt the amendments to the Water Quality Standards at 9 VAC 25-260 as presented in Attachment 4 with the exception of removing special standard "ii" from the proposal;
2. Direct staff to reevaluate the existing bacteria criteria to determine if revisions are appropriate once EPA publishes new or revised bacteria criteria, currently anticipated by 2012.
3. Direct staff to reconvene the triennial review ad hoc advisory committee to consider updates to aquatic life criteria for ammonia, copper, cadmium, cyanide and lead in § 9 VAC 25-260-140, Criteria for Surface Waters, and consider the need for a prohibition of any new or expanded mixing zones for persistent bioaccumulative toxic substances in § 9 VAC 25-260-20, General Criteria and Mixing Zones; and,
4. Direct staff to form an ad hoc advisory group to assist agency permitting staff in the development of guidance on application of § 9 VAC 25-260-30 Antidegradation Policy to Tier I waters.


Ellen Gilinsky, PhD.
Director, Water Division